

REFERENCE TITLE: victims' rights omnibus

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1286

Introduced by
Senator Gray C

AN ACT

AMENDING SECTIONS 13-804, 13-810, 13-902, 13-3602, 13-4234, 13-4401, 13-4409, 13-4411, 13-4430, 13-4434, 13-4435 AND 39-127, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 38, ARTICLE 29, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4241; AMENDING TITLE 13, CHAPTER 40, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-4440, 13-4441 AND 13-4442; REPEALING LAWS 2005, CHAPTER 260, SECTION 15; RELATING TO VICTIMS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-804, Arizona Revised Statutes, is amended to read:

13-804. Restitution for offense causing economic loss; fine for reimbursement of public monies

A. ~~Upon~~ ON a defendant's conviction for an offense causing economic loss to any person, the court, in its sole discretion, may order that all or any portion of the fine imposed be allocated as restitution to be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct.

B. In ordering restitution for economic loss pursuant to section 13-603, subsection C or subsection A of this section, the court shall consider all losses caused by the criminal offense or offenses for which the defendant has been convicted.

C. The court shall not consider the economic circumstances of the defendant in determining the amount of restitution.

D. Restitution payments that are ordered pursuant to section 13-603 and this section shall not be stayed if the defendant files a notice of appeal, and the payments may NOT be held by the court pending the outcome of an appeal UNLESS THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE CONVICTION MAY BE SET ASIDE ON A MOTION FOR A NEW TRIAL, REVERSED ON APPEAL OR VACATED IN A POSTCONVICTION PROCEEDING. THE COURT SHALL STOP HOLDING ANY PAYMENTS IF THE DEFENDANT FAILS TO DILIGENTLY PROSECUTE THE APPEAL.

E. After the court determines the amount of restitution, the court or a staff member designated by the court, including a probation officer, shall specify the manner in which the restitution is to be paid. In deciding the manner in which the restitution is to be paid, the court or a staff member designated by the court, including a probation officer, shall make reasonable efforts to contact any victim who has requested notice pursuant to sections 13-4415 and 13-4417, shall take into account the views of the victim and shall consider the economic circumstances of the defendant. In considering the economic circumstances of the defendant, the court shall consider all of the defendant's assets and income, including workers' compensation and social security benefits. The court shall make all reasonable efforts to ensure that all persons WHO ARE entitled to restitution pursuant to a court order promptly receive full restitution. The court may enter any reasonable order necessary to accomplish this. If a victim has received reimbursement for the victim's economic loss from an insurance company, a crime victim compensation program funded pursuant to section 41-2407 or any other entity, the court shall order the defendant to pay the restitution to that entity. If a victim has received only partial reimbursement for the victim's economic loss, the court shall order the defendant to pay restitution first to the victim and then to the entity that partially reimbursed the victim. If a probation, parole or community supervision officer has reason to believe that court ordered restitution is not being made, the officer shall report to the court

1 supervising the probationer or the board of executive clemency that the
2 defendant has failed to make restitution in a timely manner and the court or
3 the board of executive clemency may revoke the defendant's probation, parole
4 or community supervision.

5 F. If more than one defendant is convicted of the offense ~~which~~ THAT
6 caused the loss, the defendants are jointly and severally liable for the
7 restitution.

8 G. If the court does not have sufficient evidence to support a finding
9 of the amount of restitution or the manner in which the restitution should be
10 paid, it may conduct a hearing ~~upon~~ ON the issue according to procedures
11 established by COURT rule ~~of court~~. The court may call the defendant to
12 testify and to produce information or evidence. The state does not represent
13 persons who have suffered economic loss at the hearing but may present
14 evidence or information relevant to the issue of restitution.

15 H. After making the determinations in subsection B of this section the
16 trial court shall enter a restitution order for each defendant ~~which~~ THAT
17 sets forth all of the following:

- 18 1. The total amount of restitution the defendant owes all persons.
- 19 2. The total amount of restitution owed to each person.
- 20 3. The manner in which the restitution is to be paid.

21 I. The restitution order under subsection H of this section may be
22 supported by evidence or information introduced or submitted to the court
23 before sentencing or any evidence previously heard by the judge during the
24 proceedings.

25 J. A restitution lien shall be created in favor of the state for the
26 total amount of the restitution, fine, surcharges, assessments, costs,
27 incarceration costs and fees ordered, if any.

28 K. Notwithstanding any other law, a restitution lien is created in
29 favor of a victim of the defendant ordered to make restitution. Monies
30 received monthly from the defendant shall be applied first to satisfy the
31 restitution order entered by the court and the payment of any restitution in
32 arrears. Any monies that are owed by this state to a person who is under a
33 restitution order shall be assigned first to discharge the restitution order,
34 including any tax refund that is owed to the defendant.

35 L. If the defendant, the state or persons entitled to restitution
36 pursuant to a court order disagree with the manner of payment established in
37 subsection E of this section, the defendant, court or person entitled to
38 restitution may petition the court at any time to change the manner in which
39 the restitution is paid. Before modifying the order pertaining to the manner
40 in which the restitution is paid, the court shall give notice and an
41 opportunity to be heard to the defendant, the state and, ~~upon~~ ON request, ANY
42 persons entitled to restitution pursuant to a court order.

Sec. 2. Section 13-810, Arizona Revised Statutes, is amended to read:
 13-810. Consequences of nonpayment of fines, fees, restitution
 or incarceration costs

A. IN ADDITION TO ANY OTHER REMEDY PROVIDED BY LAW, INCLUDING A WRIT OF EXECUTION OR OTHER CIVIL ENFORCEMENT, if a defendant WHO IS sentenced to pay a fine, fee, restitution or incarceration costs defaults in the payment of ~~such~~ THE fine, fee, restitution or incarceration costs or of any installment AS ORDERED, the clerk of the court imposing the fine, fee, restitution or incarceration costs shall notify the prosecutor, the sentencing court and any person entitled to restitution pursuant to a court order. The court, on motion of the prosecuting attorney, on petition of any person entitled to restitution pursuant to a court order or on its own motion, shall require the defendant to show cause why the defendant's default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant's appearance.

B. At any hearing on the order to show cause the court, the prosecuting attorney or a person entitled to restitution may examine the defendant under oath concerning the defendant's financial condition, employment and assets or on any other matter relating to the defendant's ability to pay restitution.

C. If the court finds that the defendant has wilfully failed to pay a fine, A fee, restitution or incarceration costs or finds that the defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment, the court shall find that the default constitutes contempt and may do one of the following:

1. Order the defendant incarcerated in the county jail until the fine, fee, restitution or incarceration costs, or a specified part of the fine, fee, restitution or incarceration costs, is paid.

2. Revoke the defendant's probation, parole or community supervision and sentence the defendant to prison pursuant to law.

3. Enter an order pursuant to section 13-812. The levy or execution for the collection of a fine, A fee, restitution or incarceration costs does not discharge a defendant who is incarcerated for nonpayment of the fine, fee, restitution or incarceration costs until the amount of the fine, fee, restitution or incarceration costs is collected.

D. If the court finds that the default is not wilful and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the court may take any lawful action including:

1. Modify the manner in which the restitution, fine, fee or incarceration costs are to be paid.

2. Enter any reasonable order ~~which~~ THAT would assure compliance with the order to pay.

3. Enter an order pursuant to section 13-812. The levy or execution for the collection of a fine, A fee, restitution or incarceration costs does not discharge a defendant incarcerated for nonpayment of the fine, fee,

1 restitution or incarceration costs until the amount of the fine, fee,
2 restitution or incarceration costs is collected.

3 E. If a fine, A fee, restitution or incarceration costs are imposed on
4 an enterprise it is the duty of the person or persons authorized to make
5 disbursement from the assets of the enterprise to pay them from those assets,
6 and their failure to do so shall be held a contempt unless they make the
7 showing required in subsection A of this section.

8 F. NOTWITHSTANDING ANY LAW TO THE CONTRARY, A DEFENDANT MAY NOT BE
9 DISCHARGED FROM A TERM OF PROBATION UNTIL ANY RESTITUTION ORDERED PURSUANT TO
10 SECTION 13-603 OR 13-804 IS PAID IN FULL.

11 Sec. 3. Section 13-902, Arizona Revised Statutes, is amended to read:
12 13-902. Periods of probation

13 A. EXCEPT AS PROVIDED IN SECTION 13-810 OR unless terminated sooner,
14 probation may continue for the following periods:

- 15 1. For a class 2 felony, seven years.
- 16 2. For a class 3 felony, five years.
- 17 3. For a class 4 felony, four years.
- 18 4. For a class 5 or 6 felony, three years.
- 19 5. For a class 1 misdemeanor, three years.
- 20 6. For a class 2 misdemeanor, two years.
- 21 7. For a class 3 misdemeanor, one year.

22 B. Notwithstanding subsection A of this section, unless terminated
23 sooner, probation may continue for the following periods:

- 24 1. For a violation of section 28-1381 or 28-1382, five years.
- 25 2. For a violation of section 28-1383, ten years.

26 ~~C. When the court has required, as a condition of probation, that the~~
27 ~~defendant make restitution for any economic loss related to the defendant's~~
28 ~~offense and that condition has not been satisfied, the court at any time~~
29 ~~before the termination or expiration of probation may extend the period~~
30 ~~within the following limits:~~

- 31 ~~1. For a felony, not more than three years.~~
- 32 ~~2. For a misdemeanor, not more than one year.~~

33 ~~D.~~ C. Notwithstanding any other provision of law, justice courts and
34 municipal courts may impose the probation periods specified in subsection A,
35 paragraphs 5, 6 and 7 and subsection B, paragraph 1 of this section.

36 ~~E.~~ D. After conviction of a felony offense or an attempt to commit
37 any offense that is included in chapter 14 or 35.1 of this title or section
38 13-2308.01, 13-2923 or 13-3623, if probation is available, probation may
39 continue for a term of not less than the term that is specified in subsection
40 A of this section up to and including life and that the court believes is
41 appropriate for the ends of justice.

42 ~~F.~~ E. After conviction of a violation of section 13-3824, subsection
43 A, if a term of probation is imposed and the offense for which the person was
44 required to register was a felony, probation may continue for a term of not
45 less than the term that is specified in subsection A of this section up to

1 and including life and that the court believes is appropriate for the ends of
2 justice.

3 ~~G.~~ F. Beginning November 1, 2006, after conviction of a dangerous
4 crime against children as defined in section 13-604.01, if a term of
5 probation is imposed, the court shall require global position system
6 monitoring for the duration of the term of probation.

7 Sec. 4. Section 13-3602, Arizona Revised Statutes, is amended to read:

8 13-3602. Order of protection; procedure; contents; arrest for
9 violation; penalty; protection order from another
10 jurisdiction

11 A. A person may file a verified petition, as in civil actions, with a
12 magistrate, justice of the peace or superior court judge for an order of
13 protection for the purpose of restraining a person from committing an act
14 included in domestic violence. If the person is a minor, the parent, legal
15 guardian or person who has legal custody of the minor shall file the petition
16 unless the court determines otherwise. The petition shall name the parent,
17 guardian or custodian as the plaintiff and the minor is a specifically
18 designated person for the purposes of subsection G of this section. If a
19 person is either temporarily or permanently unable to request an order, a
20 third party may request an order of protection on behalf of the plaintiff.
21 After the request, the judicial officer shall determine if the third party is
22 an appropriate requesting party for the plaintiff. For the purposes of this
23 section, notwithstanding the location of the plaintiff or defendant, any
24 court in this state may issue or enforce an order of protection.

25 B. An order of protection shall not be granted:

26 1. Unless the party who requests the order files a written verified
27 petition for an order.

28 2. Against a person who is less than twelve years of age unless the
29 order is granted by the juvenile division of the superior court.

30 3. Against more than one defendant.

31 C. The petition shall state the:

32 1. Name of the plaintiff. The plaintiff's address shall be disclosed
33 to the court for purposes of service. If the address of the plaintiff is
34 unknown to the defendant, the plaintiff may request that the address be
35 protected. On the plaintiff's request, the address shall not be listed on
36 the petition. Whether the court issues an order of protection, the protected
37 address shall be maintained in a separate document or automated database and
38 is not subject to release or disclosure by the court or any form of public
39 access except as ordered by the court.

40 2. Name and address, if known, of the defendant.

41 3. Specific statement, including dates, of the domestic violence
42 alleged.

43 4. Relationship between the parties pursuant to section 13-3601,
44 subsection A and whether there is pending between the parties an action for

1 maternity or paternity, annulment, legal separation or dissolution of
2 marriage.

3 5. Name of the court in which any prior or pending proceeding or order
4 was sought or issued concerning the conduct that is sought to be restrained.

5 6. Desired relief.

6 D. A fee shall not be charged for filing a petition under this section
7 or for service of process. On request of the plaintiff, each order of
8 protection that is issued by a municipal court shall be served by the police
9 agency for that city if the defendant can be served within the city. If the
10 defendant cannot be served within the city, the police agency in the city in
11 which the defendant can be served shall serve the order. If the order cannot
12 be served within a city, the sheriff shall serve the order. On request of
13 the plaintiff, each order of protection that is issued by a justice of the
14 peace shall be served by the constable or sheriff for that jurisdiction if
15 the defendant can be served within the jurisdiction. If the defendant cannot
16 be served within that jurisdiction, the constable or sheriff in the
17 jurisdiction in which the defendant can be served shall serve the order. On
18 request of the plaintiff, each order of protection that is issued by a
19 superior court judge or commissioner shall be served by the sheriff of the
20 county. If the defendant cannot be served within that jurisdiction, the
21 sheriff in the jurisdiction in which the defendant can be served shall serve
22 the order. Each court shall provide, without charge, forms for purposes of
23 this section for assisting parties without counsel. The court shall make
24 reasonable efforts to provide to both parties an appropriate information
25 sheet on emergency and counseling services that are available in the local
26 area.

27 E. The court shall review the petition, any other pleadings on file
28 and any evidence offered by the plaintiff to determine whether the orders
29 requested should issue without further hearing. The court shall issue an
30 order of protection under subsection G of this section if the court
31 determines that there is reasonable cause to believe any of the following:

- 32 1. The defendant may commit an act of domestic violence.
- 33 2. The defendant has committed an act of domestic violence within the
34 past year or within a longer period of time if the court finds that good
35 cause exists to consider a longer period.

36 F. For purposes of determining the period of time under subsection E,
37 paragraph 2 of this section, any time that the defendant has been
38 incarcerated or out of this state shall not be counted. If the court denies
39 the requested relief, it may schedule a further hearing within ten days, with
40 reasonable notice to the defendant.

41 G. If a court issues an order of protection, the court may do any of
42 the following:

- 43 1. Enjoin the defendant from committing a violation of one or more of
44 the offenses included in domestic violence.

1 2. Grant one party the use and exclusive possession of the parties'
2 residence on a showing that there is reasonable cause to believe that
3 physical harm may otherwise result. If the other party is accompanied by a
4 law enforcement officer, the other party may return to the residence on one
5 occasion to retrieve belongings. A law enforcement officer is not liable for
6 any act or omission in the good faith exercise of the officer's duties under
7 this paragraph.

8 3. Restrain the defendant from contacting the plaintiff or other
9 specifically designated persons and from coming near the residence, place of
10 employment or school of the plaintiff or other specifically designated
11 locations or persons on a showing that there is reasonable cause to believe
12 that physical harm may otherwise result.

13 4. If the court finds that the defendant is a credible threat to the
14 physical safety of the plaintiff or other specifically designated persons,
15 prohibit the defendant from possessing or purchasing a firearm for the
16 duration of the order. If the court prohibits the defendant from possessing
17 a firearm, the court shall also order the defendant to transfer any firearm
18 owned or possessed by the defendant immediately after service of the order to
19 the appropriate law enforcement agency for the duration of the order. If the
20 defendant does not immediately transfer the firearm, the defendant shall
21 transfer the firearm within twenty-four hours after service of the order.

22 5. If the order was issued after notice and a hearing at which the
23 defendant had an opportunity to participate, require the defendant to
24 complete a domestic violence offender treatment program that is provided by a
25 facility approved by the department of health services or a probation
26 department or any other program deemed appropriate by the court.

27 6. Grant relief that is necessary for the protection of the alleged
28 victim and other specifically designated persons and that is proper under the
29 circumstances.

30 H. The court shall not grant a mutual order of protection. If
31 opposing parties separately file verified petitions for an order of
32 protection, the courts after consultation between the judges involved may
33 consolidate the petitions of the opposing parties for hearing. This does not
34 prohibit a court from issuing cross orders of protection.

35 I. At any time during the period during which the order is in effect,
36 a party WHO IS under an order of protection or WHO IS restrained from
37 contacting the other party is entitled to one hearing on written request. No
38 fee may be charged for requesting a hearing. A hearing that is requested by
39 a party who is under an order of protection or who is restrained from
40 contacting the other party shall be held within ten days from the date
41 requested unless the court finds good cause to continue the hearing. If
42 exclusive use of the home is awarded, the hearing shall be held within five
43 days from the date requested. The hearing shall be held at the earliest
44 possible time. An ex parte order that is issued under this section shall
45 state on its face that the defendant is entitled to a hearing on written

1 request and shall include the name and address of the judicial office where
2 the request may be filed. After the hearing, the court may modify, quash or
3 continue the order.

4 J. The order shall include the following statement:

5 Warning

6 This is an official court order. If you disobey this
7 order, you ~~may~~ WILL be arrested and prosecuted for the crime of
8 interfering with judicial proceedings and any other crime you
9 may have committed in disobeying this order.

10 K. A copy of the petition and the order shall be served on the
11 defendant within one year from the date the order is signed. An order of
12 protection that is not served on the defendant within one year expires. An
13 order is effective on the defendant on service of a copy of the order and
14 petition. An order expires one year after service on the defendant. A
15 modified order is effective ~~upon~~ ON service and expires one year after
16 service of the initial order and petition.

17 L. Each affidavit, acceptance or return of service shall be promptly
18 filed with the clerk of the issuing court. This filing shall be completed in
19 person, shall be made by fax or shall be postmarked, if sent by mail, no
20 later than the end of the seventh court business day after the date of
21 service. If the filing is made by fax, the original affidavit, acceptance or
22 return of service shall be promptly filed with the court. Within twenty-four
23 hours after the affidavit, acceptance or return of service has been filed,
24 excluding weekends and holidays, the court from which the order or any
25 modified order was issued shall forward to the sheriff of the county in which
26 the court is located a copy of the order of protection and a copy of the
27 affidavit or certificate of service of process or acceptance of service. On
28 receiving these copies, the sheriff shall register the order. Registration
29 of an order means that a copy of the order of protection and a copy of the
30 affidavit or acceptance of service have been received by the sheriff's
31 office. The sheriff shall maintain a central repository for orders of
32 protection so that the existence and validity of the orders can be easily
33 verified. The effectiveness of an order does not depend on its registration,
34 and for enforcement purposes pursuant to section 13-2810, a copy of an order
35 of the court, whether or not registered, is presumed to be a valid existing
36 order of the court for a period of one year from the date of service of the
37 order on the defendant.

38 M. A peace officer, with or without a warrant, may arrest a person if
39 the peace officer has probable cause to believe that the person has violated
40 section 13-2810 by disobeying or resisting an order that is issued in any
41 jurisdiction in this state pursuant to this section, whether or not such
42 violation occurred in the presence of the officer. Criminal violations of an
43 order issued pursuant to this section shall be referred to an appropriate law
44 enforcement agency. The law enforcement agency shall request that a
45 prosecutorial agency file the appropriate charges. A violation of an order

1 of protection shall not be adjudicated by a municipal or justice court unless
2 a complaint has been filed or other legal process has been requested by the
3 prosecuting agency. The provisions for release under section 13-3883,
4 subsection A, paragraph 4 and section 13-3903 do not apply to an arrest made
5 pursuant to this section. For THE purposes of this section, any court in
6 this state has jurisdiction to enforce a valid order of protection that is
7 issued in this state and that has been violated in any jurisdiction in this
8 state.

9 N. A person who is arrested pursuant to subsection M of this section
10 may be released from custody in accordance with the Arizona rules of criminal
11 procedure or any other applicable statute. An order for release, with or
12 without an appearance bond, shall include pretrial release conditions that
13 are necessary to provide for the protection of the alleged victim and other
14 specifically designated persons and may provide for any other additional
15 conditions that the court deems appropriate, including participation in any
16 counseling programs available to the defendant. THE ALLEGED VICTIM AND OTHER
17 SPECIFICALLY DESIGNATED PERSONS SHALL BE NOTIFIED IMMEDIATELY OF THE ARRESTED
18 PERSON'S RELEASE FROM CUSTODY.

19 O. The remedies provided in this section for enforcement of the orders
20 of the court are in addition to any other civil and criminal remedies
21 available. The superior court shall have exclusive jurisdiction to issue
22 orders of protection in all cases if it appears from the petition that an
23 action for maternity or paternity, annulment, legal separation or dissolution
24 of marriage is pending between the parties. A municipal court or justice
25 court shall not issue an order of protection if it appears from the petition
26 that an action for maternity or paternity, annulment, legal separation or
27 dissolution of marriage is pending between the parties. After issuance of an
28 order of protection, if the municipal court or justice court determines that
29 an action for maternity or paternity, annulment, legal separation or
30 dissolution of marriage is pending between the parties, the municipal court
31 or justice court shall stop further proceedings in the action and forward all
32 papers, together with a certified copy of docket entries or any other record
33 in the action, to the superior court where they shall be docketed in the
34 pending superior court action and shall proceed as though the petition for an
35 order of protection had been originally brought in the superior court.
36 Notwithstanding any other law and unless prohibited by an order of the
37 superior court, a municipal court or justice court may hold a hearing on all
38 matters relating to its ex parte order of protection if the hearing was
39 requested before receiving written notice of the pending superior court
40 action. No order of protection shall be invalid or determined to be
41 ineffective merely because it was issued by a lower court at a time when an
42 action for maternity or paternity, annulment, legal separation or dissolution
43 of marriage was pending in a higher court. After a hearing with notice to
44 the affected party, the court may enter an order requiring any party to pay
45 the costs of the action, including reasonable attorney fees, if any. An

1 order that is entered by a justice court or municipal court after a hearing
 2 pursuant to this section may be appealed to the superior court as provided in
 3 title 22, chapter 2, article 4, section 22-425, subsection B and the superior
 4 court rules of civil appellate procedure without regard to an amount in
 5 controversy. No fee may be charged to either party for filing an appeal.
 6 For the purposes of this subsection, "pending" means, with respect to an
 7 action for annulment, legal separation or dissolution of marriage or for
 8 maternity or paternity, either that:

9 1. An action has been commenced but a final judgment, decree or order
 10 has not been entered.

11 2. A post-decree proceeding has been commenced but a judgment, decree
 12 or order finally determining the proceeding has not been entered.

13 P. A peace officer who makes an arrest pursuant to this section or
 14 section 13-3601 is not civilly or criminally liable for the arrest if the
 15 officer acts on probable cause and without malice.

16 Q. In addition to persons authorized to serve process pursuant to rule
 17 4(d) of the Arizona rules of civil procedure, a peace officer or a
 18 correctional officer as defined in section 41-1661 who is acting in the
 19 officer's official capacity may serve an order of protection that is issued
 20 pursuant to this section. Service of the order of protection has priority
 21 over other service of process that does not involve an immediate threat to
 22 the safety of a person.

23 R. A valid protection order that is related to domestic or family
 24 violence and that is issued by a court in another state, a court of a United
 25 States territory or a tribal court shall be accorded full faith and credit
 26 and shall be enforced as if it were issued in this state for as long as the
 27 order is effective in the issuing jurisdiction. For the purposes of this
 28 subsection:

29 1. A protection order includes any injunction or other order that is
 30 issued for the purpose of preventing violent or threatening acts or
 31 harassment against, contact or communication with or physical proximity to
 32 another person. A protection order includes temporary and final orders other
 33 than support or child custody orders that are issued by civil and criminal
 34 courts if the order is obtained by the filing of an independent action or is
 35 a pendente lite order in another proceeding. The civil order shall be issued
 36 in response to a complaint, petition or motion that was filed by or on behalf
 37 of a person seeking protection.

38 2. A protection order is valid if the issuing court had jurisdiction
 39 over the parties and the matter under the laws of the issuing state, a United
 40 States territory or an Indian tribe and the person against whom the order was
 41 issued had reasonable notice and an opportunity to be heard. If the order is
 42 issued ex parte, the notice and opportunity to be heard shall be provided
 43 within the time required by the laws of the issuing state, a United States
 44 territory or an Indian tribe and within a reasonable time after the order was
 45 issued.

3. A mutual protection order that is issued against both the party who filed a petition or a complaint or otherwise filed a written pleading for protection against abuse and the person against whom the filing was made is not entitled to full faith and credit if either:

(a) The person against whom an initial order was sought has not filed a cross or counter petition or other written pleading seeking a protection order.

(b) The issuing court failed to make specific findings supporting the entitlement of both parties to be granted a protection order.

4. A peace officer may presume the validity of and rely on a copy of a protection order that is issued by another state, a United States territory or an Indian tribe if the order was given to the officer by any source. A peace officer may also rely on the statement of any person who is protected by the order that the order remains in effect. A peace officer who acts in good faith reliance on a protection order is not civilly or criminally liable for enforcing the protection order pursuant to this section.

Sec. 5. Section 13-4234, Arizona Revised Statutes, is amended to read:

13-4234. Commencement of proceedings; notice; appointment of counsel for capital defendants; assignment of judge; stay

A. A proceeding is commenced by timely filing a notice of postconviction relief with the clerk of the court in which the conviction occurred. The clerk of the trial court shall provide notice forms for commencement of first and successive postconviction relief proceedings. The notice shall bear the caption of the original criminal action to which it pertains. The notice in successive postconviction relief proceedings shall comply with section 13-4232, subsection B. On receipt of the notice, the clerk of the trial court shall file a copy of the notice in the case file of each original action and promptly send copies to the defendant, the defendant's attorney, if known, the county attorney and the attorney general, noting the date and manner of sending the copies in the record. The state shall notify the victim on request.

B. If an appeal of the defendant's conviction or sentence, or both, is pending, the clerk, within five days after the filing of the notice for postconviction relief, shall send a copy of the notice to the appropriate appellate court, noting the date and manner of sending the copy in the record.

C. In noncapital cases, the notice shall be filed within ~~ninety~~ FORTY-FIVE days after the judgment and sentence are entered or within ~~thirty~~ FIFTEEN days after the order and mandate affirming the judgment and sentence is issued on direct appeal, whichever is later. A defendant has ~~sixty~~ THIRTY days from the filing of the notice in which to file a petition. On the filing of a successive notice, a defendant has ~~thirty~~ FIFTEEN days from the filing of the notice in which to file a petition.

1 D. In capital cases, on the issuance of a mandate affirming the
2 defendant's conviction and sentence on direct appeal, the clerk of the
3 supreme court expeditiously shall file a notice of postconviction relief with
4 the trial court. On the first notice in capital cases, a defendant has sixty
5 days from the filing of the notice in which to file a petition. The supreme
6 court shall appoint counsel pursuant to section 13-4041, subsection B. All
7 indigent state prisoners under a capital sentence are entitled to the
8 appointment of counsel to represent them in state postconviction proceedings.
9 A competent indigent defendant may reject the offer of counsel with an
10 understanding of its legal consequence. On successive notice in capital
11 cases, the trial court shall appoint the previous postconviction relief
12 counsel of the capital defendant unless counsel is waived pursuant to section
13 13-4041, subsection D or good cause exists to appoint another qualified
14 attorney pursuant to section 13-4041, subsection B. On the filing of a
15 successive notice, a capital defendant or an appointed attorney has thirty
16 days from the filing of the notice in which to file a petition.

17 E. A defendant who has pled guilty and who is precluded from filing a
18 direct appeal pursuant to section 13-4033 may be granted an additional ~~thirty~~
19 ~~FIFTEEN~~ day extension of time in which to file the petition if the
20 defendant's counsel refuses to raise issues and leaves the defendant
21 insufficient time to file a petition within the time limits.

22 F. On a specific and detailed showing of good cause, a defendant in a
23 noncapital case may be granted up to a sixty day extension of time in which
24 to file the petition. On a specific and detailed showing of good cause, a
25 defendant in a capital case may be granted one thirty day extension of time
26 in which to file the petition.

27 G. The time limits are jurisdictional, and an untimely filed notice or
28 petition shall be dismissed with prejudice.

29 H. If the record of the trial proceeding has not been transcribed, the
30 defendant may request on a form provided by the clerk of the superior court
31 that the record be prepared. The court shall order that those portions of
32 the record be prepared that it deems necessary to resolve the issues to be
33 raised in the petition. The preparation of the record is a county expense if
34 the defendant is indigent. The time for filing the petition is tolled from
35 the time a request for the record is made until the record is prepared or the
36 request is denied.

37 I. The proceeding shall be assigned to the sentencing judge if it is
38 possible. If it appears that the sentencing judge's testimony is relevant,
39 the sentencing judge shall transfer the case to another judge.

40 J. If the defendant has received a sentence of death and the supreme
41 court has fixed the time for execution of the sentence, a stay of execution
42 shall not be granted on the filing of a second or subsequent petition except
43 on separate application for a stay to the supreme court setting forth with
44 particularity those issues raised ~~which~~ ~~THAT~~ are not precluded under section

1 13-4232. The warrant shall not be stayed to allow for the filing of a
2 petition.

3 Sec. 6. Title 13, chapter 38, article 29, Arizona Revised Statutes, is
4 amended by adding section 13-4241, to read:

5 13-4241. Postconviction relief; discovery; disclosure

6 A. IN A POSTCONVICTION RELIEF PROCEEDING, DISCOVERY IS LIMITED TO
7 EVIDENCE THAT IS REASONABLY CALCULATED TO SUPPORT ONE OR MORE OF THE GROUNDS
8 LISTED IN SECTION 13-4231 AND RULE 32.1, ARIZONA RULES OF CRIMINAL PROCEDURE.
9 IF A PERSON IS PRECLUDED FROM RELIEF PURSUANT TO SECTION 13-4232 OR RULE
10 32.2, ARIZONA RULES OF CRIMINAL PROCEDURE, DISCOVERY SHALL NOT BE PERMITTED.
11 A VICTIM WHO FILES A NOTICE OF APPEARANCE PURSUANT TO SECTION 13-4234.01
12 SHALL BE PROVIDED NOTICE OF ALL DISCOVERY REQUESTS. A PARTY SHALL RECEIVE
13 PERMISSION FROM THE TRIAL COURT BEFORE DEPOSING OR INTERVIEWING ANY TRIAL
14 WITNESS OR JUROR. THE TRIAL COURT SHALL GRANT PERMISSION FOR THE DEPOSITION
15 OR INTERVIEW ON A SHOWING THAT THE DEPOSITION OR INTERVIEW IS REASONABLY
16 LIKELY TO LEAD TO EVIDENCE THAT IS REASONABLY CALCULATED TO SUPPORT ONE OR
17 MORE OF THE GROUNDS LISTED IN SECTION 13-4231 AND RULE 32.1, ARIZONA RULES OF
18 CRIMINAL PROCEDURE.

19 B. WITHIN NINETY DAYS AFTER THE FILING OF A NOTICE OF POSTCONVICTION
20 RELIEF PURSUANT TO SECTION 13-4234, SUBSECTION C, THE DEFENDANT SHALL PROVIDE
21 TO THE PROSECUTOR ALL OF THE FOLLOWING:

22 1. THE NAME AND ADDRESS OF ANY PERSON WHOM THE DEFENDANT INTENDS TO
23 CALL AS A WITNESS IN ANY POSTCONVICTION RELIEF PROCEEDING AND THE PERSON'S
24 RELEVANT WRITTEN OR RECORDED STATEMENT.

25 2. THE NAME AND ADDRESS OF ANY EXPERT WHO PERSONALLY EXAMINED THE
26 DEFENDANT SUBSEQUENT TO TRIAL AND IMPOSITION OF SENTENCE AND THE RESULTS OF
27 ANY PHYSICAL OR MENTAL EXAMINATIONS, SCIENTIFIC TESTS, EXPERIMENTS OR OTHER
28 COMPARISONS THAT HAVE BEEN COMPLETED.

29 3. A LIST OF ALL PAPERS, DOCUMENTS, PHOTOGRAPHS OR TANGIBLE OBJECTS
30 THAT THE DEFENDANT INTENDS TO USE AT ANY POSTCONVICTION PROCEEDING OR THAT
31 WERE OBTAINED FROM OR PURPORTEDLY BELONG TO THE DEFENDANT.

32 C. WITHIN SIXTY DAYS AFTER THE FILING OF DISCLOSURE BY THE DEFENDANT,
33 THE PROSECUTOR SHALL PROVIDE TO THE DEFENDANT ALL OF THE FOLLOWING:

34 1. THE NAME AND ADDRESS OF ANY PERSON WHOM THE PROSECUTOR INTENDS TO
35 CALL AS A WITNESS AT ANY POSTCONVICTION RELIEF PROCEEDING AND THE PERSON'S
36 WRITTEN OR RECORDED STATEMENT.

37 2. THE NAME AND ADDRESS OF ANY EXPERT WHO PERSONALLY EXAMINED THE
38 DEFENDANT SUBSEQUENT TO TRIAL AND IMPOSITION OF SENTENCE AND THE RESULTS OF
39 ANY PHYSICAL OR MENTAL EXAMINATIONS, SCIENTIFIC TESTS, EXPERIMENTS OR OTHER
40 COMPARISONS THAT HAVE BEEN COMPLETED.

41 3. A LIST OF ALL PAPERS, DOCUMENTS, PHOTOGRAPHS OR TANGIBLE OBJECTS
42 THAT THE PROSECUTOR INTENDS TO USE AT ANY POSTCONVICTION PROCEEDING OR THAT
43 WERE OBTAINED FROM OR PURPORTEDLY BELONG TO THE DEFENDANT, INCLUDING ANY
44 ELECTRONIC SURVEILLANCE OF ANY CONVERSATIONS TO WHICH THE DEFENDANT WAS A
45 PARTY.

D. THE DUTIES PRESCRIBED IN THIS SECTION ARE CONTINUING DUTIES. EACH PARTY SHALL MAKE ADDITIONAL DISCLOSURE WHEN NEW OR DIFFERENT INFORMATION SUBJECT TO DISCLOSURE IS DISCOVERED.

E. THE DISCLOSURES REQUIRED BY THIS SECTION SHALL BE COMPLETED AT LEAST SEVEN DAYS BEFORE ANY HEARING. ON THE MOTION OF A PARTY SEEKING TO USE MATERIAL AND INFORMATION THAT WAS NOT DISCLOSED AT LEAST SEVEN DAYS BEFORE TRIAL, THE COURT SHALL GRANT A REASONABLE EXTENSION OF TIME IN WHICH TO COMPLETE THE DISCLOSURE AND GRANT LEAVE TO USE THE MATERIAL OR INFORMATION IF THE MATERIAL OR INFORMATION COULD NOT HAVE BEEN DISCOVERED OR DISCLOSED EARLIER EVEN WITH DUE DILIGENCE AND THE MATERIAL OR INFORMATION WAS DISCLOSED IMMEDIATELY ON ITS DISCOVERY. IF THE MATERIAL OR INFORMATION COULD HAVE BEEN DISCOVERED OR DISCLOSED WITH DUE DILIGENCE, THE COURT MAY EITHER DENY LEAVE OR GRANT A REASONABLE EXTENSION OF TIME IN WHICH TO COMPLETE THE DISCLOSURE AND LEAVE TO USE THE MATERIAL OR INFORMATION, AND IF GRANTED THE COURT MAY IMPOSE ANY SANCTION OTHER THAN PRECLUSION OR DISMISSAL LISTED IN RULE 15.7, ARIZONA RULES OF CRIMINAL PROCEDURE.

F. EITHER PARTY MAY REQUEST ONE THIRTY-DAY EXTENSION OF TIME IN WHICH TO COMPLY WITH THE DISCLOSURE REQUIREMENTS UNDER THIS SECTION. ANY ADDITIONAL THIRTY-DAY EXTENSIONS MAY BE GRANTED ONLY IF THE PROSECUTOR AND THE DEFENDANT AGREE TO THE ADDITIONAL EXTENSION AND THERE IS A SHOWING OF EXTRAORDINARY CIRCUMSTANCES.

G. A SECOND OR SUCCESSIVE PETITION FOR POSTCONVICTION RELIEF MAY BE FILED ONLY ON PERMISSION OF THE COURT OF APPEALS. THE COURT OF APPEALS MAY GRANT PERMISSION ONLY IF THE DEFENDANT MAKES A THRESHOLD SHOWING THAT THE SUCCESSIVE PETITION IS MERITORIOUS AS PROVIDED IN RULE 32.1(e) OR (g), ARIZONA RULES OF CRIMINAL PROCEDURE, AND IS NOT SUBJECT TO PRECLUSION PURSUANT TO SECTION 13-4232 AND RULE 32.2, ARIZONA RULES OF CRIMINAL PROCEDURE.

H. IF A DEFENDANT IS SENTENCED TO DEATH, IN CONJUNCTION WITH THE FILING OF AN AUTOMATIC NOTICE OF APPEAL AS SPECIFIED BY RULES 26.15 AND 31.2, ARIZONA RULES OF CRIMINAL PROCEDURE, THE CLERK OF THE SUPERIOR COURT SHALL ORDER THAT AN EXACT COPY OF THE DEFENSE COUNSELS' TRIAL FILE BE SEALED AND TRANSFERRED TO THE CLERK OF THE SUPREME COURT FOR STORAGE UNTIL THE CLERK OF THE SUPREME COURT FILES A NOTICE OF POSTCONVICTION RELIEF PURSUANT TO SECTION 13-4234, SUBSECTION D. THE FILE SHALL BE MADE AVAILABLE FOR DISCOVERY TO BOTH THE DEFENDANT AND THE STATE IN ANY SUBSEQUENT POSTCONVICTION RELIEF PROCEEDING.

Sec. 7. Section 13-4401, Arizona Revised Statutes, is amended to read:
13-4401. Definitions

In this chapter, unless the context otherwise requires:

1. "Accused" means a person who has been arrested for committing a criminal offense and who is held for an initial appearance or other proceeding before trial.

1 2. "Appellate proceeding" means any contested matter before the state
2 court of appeals, the state supreme court, a federal court of appeals or the
3 United States supreme court.

4 3. "Arrest" means the actual custodial restraint of a person or the
5 person's submission to custody.

6 4. "Court" means all state, county and municipal courts in this state.

7 5. "Crime victim advocate" means a person who is employed or
8 authorized by a public entity or a private entity that receives public
9 funding primarily to provide counseling, treatment or other supportive
10 assistance to crime victims.

11 6. "Criminal offense" means conduct that gives a peace officer or
12 prosecutor probable cause to believe that one of the following has occurred:

13 (a) A felony.

14 (b) A misdemeanor involving physical injury, the threat of physical
15 injury or a sexual offense.

16 (c) A VIOLATION OF SECTION 28-661.

17 7. "Criminal proceeding" means any hearing, argument or other matter
18 that is scheduled by and held before a trial court but does not include any
19 deposition, lineup, grand jury proceeding or other matter that is not held in
20 the presence of the court.

21 8. "Custodial agency" means any law enforcement officer or agency, a
22 sheriff or municipal jailer, the state department of corrections or a secure
23 mental health facility that has custody of a person who is arrested or in
24 custody for a criminal offense.

25 9. "Defendant" means a person or entity that is formally charged by
26 complaint, indictment or information of committing a criminal offense.

27 10. "Final disposition" means the ultimate termination of the criminal
28 prosecution of a defendant by a trial court, including dismissal, acquittal
29 or imposition of a sentence.

30 11. "Immediate family" means a victim's spouse, parent, child, sibling,
31 grandparent or lawful guardian.

32 12. "Lawful representative" means a person who is designated by the
33 victim or appointed by the court and who acts in the best interests of the
34 victim.

35 13. "Post-arrest release" means the discharge of the accused from
36 confinement on recognizance, bond or other condition.

37 14. "Post-conviction release" means parole, work furlough, community
38 supervision, probation if the court waived community supervision pursuant to
39 section 13-603, home arrest or any other permanent, conditional or temporary
40 discharge from confinement in the custody of the state department of
41 corrections or a sheriff or from confinement in a municipal jail or a secure
42 mental health facility.

43 15. "Post-conviction relief proceeding" means a contested argument or
44 evidentiary hearing that is held in open court and that involves a request
45 for relief from a conviction or sentence.

1 16. "Prisoner" means a person who has been convicted of a criminal
2 offense against a victim and who has been sentenced to the custody of the
3 sheriff, the state department of corrections, a municipal jail or a secure
4 mental health facility.

5 17. "Release" means no longer in the custody of a custodial agency and
6 includes transfer from one custodial agency to another custodial agency.

7 18. "Rights" means any right that is granted to the victim by the laws
8 of this state.

9 19. "Victim" means a person against whom the criminal offense has been
10 committed, including a minor, or if the person is killed or incapacitated,
11 the person's spouse, parent, child, grandparent or sibling, any other person
12 related to the person by consanguinity or affinity to the second degree or
13 any other lawful representative of the person, except if the person or the
14 person's spouse, parent, child, grandparent, sibling, other person related to
15 the person by consanguinity or affinity to the second degree or other lawful
16 representative is in custody for an offense or is the accused.

17 Sec. 8. Section 13-4409, Arizona Revised Statutes, is amended to read:

18 13-4409. Notice of criminal proceedings

19 A. Except as provided in subsection B, the court shall provide notice
20 of criminal proceedings, for criminal offenses filed by information,
21 complaint or indictment, except initial appearances and arraignments, to the
22 prosecutor's office at least five days before a scheduled proceeding to allow
23 the prosecutor's office to provide notice to the victim.

24 B. If the court finds that it is not reasonable to provide the five
25 days' notice to the prosecutor's office under subsection A, the court shall
26 state in the record why it was not reasonable to provide five days' notice.

27 C. On receiving the notice from the court, the prosecutor's office
28 shall, on request, give notice to the victim in a timely manner of scheduled
29 proceedings and any changes in that schedule, INCLUDING ANY CONTINUANCES.

30 Sec. 9. Section 13-4411, Arizona Revised Statutes, is amended to read:

31 13-4411. Notice of post-conviction review and appellate
32 proceedings

33 A. Within fifteen days after sentencing the prosecutor's office shall,
34 on request, notify the victim of the sentence imposed on the defendant.

35 B. The prosecutor's office shall provide the victim with a form that
36 allows the victim to request post-conviction notice of all post-conviction
37 review and appellate proceedings, all post-conviction release proceedings,
38 all probation modification proceedings that impact the victim, all probation
39 revocation or termination proceedings, any decisions that arise out of these
40 proceedings, all releases and all escapes.

41 C. The prosecutor's office shall advise the victim on how the
42 completed request form may be filed with the appropriate agencies and
43 departments.

44 D. On request of the victim, the prosecutor's office that is
45 responsible for handling any post-conviction or appellate proceedings shall

1 notify the victim of the proceedings and any decisions that arise out of the
2 proceedings.

3 E. A VICTIM WHO REQUESTS NOTICE OF APPELLATE PROCEEDINGS SHALL RECEIVE
4 NOTICE FROM THE COURT OF ANY DECISION BY THE COURT WITHIN A REASONABLE TIME
5 BEFORE THE DECISION IS RELEASED TO THE PUBLIC.

6 Sec. 10. Section 13-4430, Arizona Revised Statutes, is amended to
7 read:

8 13-4430. Consultation between crime victim advocate and victim;
9 privileged information; exception

10 A. A crime victim advocate shall not disclose as a witness or
11 otherwise any communication except compensation or restitution information
12 between himself and the victim unless the victim consents in writing to the
13 disclosure.

14 B. Unless the victim consents in writing to the disclosure, a crime
15 victim advocate shall not disclose records, notes, documents, correspondence,
16 reports or memoranda, except compensation or restitution information, that
17 contain opinions, theories or other information made while advising,
18 counseling or assisting the victim or that are based on the communication
19 between the victim and the advocate.

20 C. The communication is not privileged if the crime victim advocate
21 knows that the victim will give or has given perjured testimony or if the
22 communication contains exculpatory ~~material~~ EVIDENCE.

23 D. A defendant may make a motion for disclosure of privileged
24 information. If the court finds there is reasonable cause to believe the
25 material is exculpatory, the court shall hold a hearing in camera. Material
26 that the court finds is exculpatory shall be disclosed to the defendant.

27 E. If, with the consent of the victim, the crime victim advocate
28 discloses to the prosecutor or a law enforcement agency any communication
29 between the victim and the crime victim advocate or any records, notes,
30 documents, correspondence, reports or memoranda, the prosecutor or law
31 enforcement agent shall disclose such material to the defendant's attorney
32 only if such information is otherwise discoverable.

33 F. Notwithstanding ~~the provisions of~~ subsections A and B, ~~if a crime~~
34 ~~victim advocate is employed or authorized by a prosecutor's office, the~~
35 ~~advocate may disclose information to the prosecutor with the oral consent of~~
36 ~~the victim~~ A CRIME VICTIM ADVOCATE MAY DISCLOSE INFORMATION TO OTHER
37 PROFESSIONALS AND ADMINISTRATIVE SUPPORT PERSONS THAT THE ADVOCATE WORKS WITH
38 FOR THE PURPOSE OF ASSISTING THE ADVOCATE IN PROVIDING SERVICES TO THE
39 VICTIM.

40 Sec. 11. Section 13-4434, Arizona Revised Statutes, is amended to
41 read:

42 13-4434. Victim's right to privacy

43 ~~Beginning January 1, 1992~~ The victim has the right at any court
44 proceeding not to testify regarding the victim's addresses, telephone
45 numbers, ~~place~~ PLACES of employment or other locating information unless the

1 victim consents or the court orders disclosure on finding that a compelling
2 need for the information exists. A court proceeding on the motion shall be
3 in camera. A VICTIM'S CONTACT AND IDENTIFYING INFORMATION THAT IS OBTAINED,
4 COMPILED OR REPORTED BY A LAW ENFORCEMENT AGENCY SHALL NOT BE INCLUDED IN
5 PUBLICLY ACCESSIBLE RECORDS PERTAINING TO THE CRIMINAL CASE INVOLVING THE
6 VICTIM.

7 Sec. 12. Section 13-4435, Arizona Revised Statutes, is amended to
8 read:

9 13-4435. Speedy trial; continuance; notice

10 A. In any criminal proceeding, the court, prosecutor and law
11 enforcement officials shall take appropriate action to ensure a speedy trial
12 for the victim.

13 B. THE COURT MAY GRANT A CONTINUANCE ON THE MOTION OF A PARTY. THE
14 MOTION SHALL BE IN WRITING AND SHALL STATE WITH SPECIFICITY ANY REASON
15 JUSTIFYING THE CONTINUANCE. A VICTIM SHALL RECEIVE NOTICE OF THE MOTION FOR
16 CONTINUANCE WITHIN A REASONABLE TIME.

17 C. THE COURT SHALL GRANT A CONTINUANCE ONLY IF EXTRAORDINARY
18 CIRCUMSTANCES EXIST AND THE DELAY IS INDISPENSABLE TO THE INTERESTS OF
19 JUSTICE. A CONTINUANCE MAY BE GRANTED ONLY FOR THE TIME NECESSARY TO SERVE
20 THE INTERESTS OF JUSTICE.

21 ~~B. D. In any criminal proceeding in which a continuance is requested~~
22 BEFORE RULING ON A MOTION FOR A CONTINUANCE, the court shall consider the
23 victim's views and the ~~victim's right~~ RIGHTS OF THE DEFENDANT AND THE VICTIM
24 to a speedy trial. If a continuance is granted, the court shall state on the
25 record the SPECIFIC reason for the continuance AND SHALL MAKE THE RECORD
26 AVAILABLE TO THE VICTIM.

27 E. NO OTHER CONTINUANCES MAY BE GRANTED EXCEPT PURSUANT TO RULES
28 8.1(e), 8.2(e) AND 8.4(d), ARIZONA RULES OF CRIMINAL PROCEDURE.

29 Sec. 13. Title 13, chapter 40, Arizona Revised Statutes, is amended by
30 adding sections 13-4440, 13-4441 and 13-4442, to read:

31 13-4440. Speedy trial requirement; capital cases

32 A. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, EVERY PERSON AGAINST
33 WHOM A NOTICE OF INTENT TO SEEK THE DEATH PENALTY HAS BEEN FILED SHALL BE
34 TRIED BY THE COURT HAVING JURISDICTION OF THE OFFENSE WITHIN EIGHTEEN MONTHS
35 AFTER ARRAIGNMENT. ALL DISCOVERY AND DISCLOSURE SHALL TAKE PLACE BEFORE THE
36 TRIAL.

37 B. IF A PARTY SEEKS A CONTINUANCE THAT WOULD EXTEND THE TRIAL DATE
38 PAST THE TIME LIMIT PROVIDED FOR IN SUBSECTION A, THE PARTY PROMPTLY SHALL
39 FILE A WRITTEN APPLICATION WITH THE SUPREME COURT REQUESTING A CONTINUANCE OF
40 THE TRIAL DATE. ON FILING OF AN APPLICATION TO CONTINUE, A SIMULTANEOUS
41 NOTICE OF THE APPLICATION TO EXTEND THE PRESUMPTIVE TRIAL DATE SHALL BE
42 PROVIDED TO THE SUPERIOR COURT, THE OPPOSING PARTY AND ANY VICTIM WHO HAS
43 ENTERED A NOTICE OF APPEARANCE. THE OPPOSING PARTY AND ANY VICTIM WHO HAS
44 ENTERED A NOTICE OF APPEARANCE SHALL HAVE FIVE DAYS FROM THE FILING OF THE

1 APPLICATION TO FILE ANY RESPONSE OBJECTING TO THE APPLICATION. A REPLY, IF
2 ANY, SHALL BE FILED WITHIN THREE DAYS OF THE FILING OF ANY RESPONSE.

3 C. THE SUPREME COURT MAY GRANT AN APPLICATION TO EXTEND THE
4 PRESUMPTIVE TRIAL DATE ONLY IF EXTRAORDINARY CIRCUMSTANCES EXIST AND THE
5 DELAY IS INDISPENSABLE TO THE INTERESTS OF JUSTICE. WITHIN FIVE DAYS OF THE
6 FILLING OF A REPLY OR THE EXPIRATION OF THE TIME TO FILE A REPLY, THE CHIEF
7 JUSTICE SHALL ISSUE A WRITTEN RULING ON THE APPLICATION. THE RULING SHALL
8 CONTAIN A CONSIDERATION OF THE RIGHTS OF ANY VICTIM AND THE DEFENDANT TO A
9 SPEEDY DISPOSITION OF THE CASE AND SHALL STATE THE SPECIFIC REASON WHY THE
10 DELAY IS INDISPENSABLE TO THE INTERESTS OF JUSTICE. THE PRESUMPTIVE TRIAL
11 DATE MAY BE EXTENDED FOR A MAXIMUM OF THIRTY DAYS AND NO FURTHER EXTENSIONS
12 ARE PERMITTED.

13 13-4441. Speedy trial requirement; noncapital cases; case
14 transfer limitations; definition

15 A. BEFORE A CASE MAY BE TRANSFERRED TO ANOTHER JUDGE PURSUANT TO A
16 CASE TRANSFER SYSTEM, THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL ASSIGN
17 THE CASE TO BE TRIED ON THE DATE SET FOR TRIAL AS FOLLOWS:

18 1. TO A JUDGE IN THE CRIMINAL DIVISION OF THE SUPERIOR COURT. IF A
19 JUDGE FROM THE CRIMINAL DIVISION IS UNABLE TO TRY THE CASE OR THERE IS NOT A
20 SEPARATE CRIMINAL DIVISION, THE PRESIDING JUDGE SHALL ASSIGN THE CASE
21 PURSUANT TO PARAGRAPH 2.

22 2. TO A QUALIFIED COMMISSIONER. IF A QUALIFIED COMMISSIONER IS UNABLE
23 TO TRY THE CASE, THE PRESIDING JUDGE SHALL ASSIGN THE CASE PURSUANT TO
24 PARAGRAPH 3.

25 3. TO A QUALIFIED JUDGE PRO TEMPORE. IF A QUALIFIED JUDGE PRO TEMPORE
26 IS UNABLE TO TRY THE CASE, THE PRESIDING JUDGE SHALL ASSIGN THE CASE PURSUANT
27 TO PARAGRAPH 4.

28 4. TO ANY OTHER JUDGE IN THE SUPERIOR COURT. IF ANOTHER JUDGE IN THE
29 SUPERIOR COURT IS UNABLE TO TRY THE CASE, THE PRESIDING JUDGE MAY PUT THE
30 CASE INTO THE CASE TRANSFER SYSTEM.

31 B. A JUDGE OF THE SUPERIOR COURT, QUALIFIED COMMISSIONER OR QUALIFIED
32 JUDGE PRO TEMPORE IS DEEMED UNABLE TO TRY A CASE PURSUANT TO THIS SECTION IF
33 THE PRESIDING JUDGE FINDS THAT THE ASSIGNMENT WOULD CAUSE AN UNDUE HARDSHIP
34 TO ANY PARTY WITH A MATTER PENDING BEFORE THE JUDGE, COMMISSIONER OR JUDGE
35 PRO TEMPORE. THE PRESIDING JUDGE SHALL STATE THE REASONS THAT A JUDGE IS
36 UNABLE TO TRY THE CASE IN A MINUTE ENTRY.

37 C. THIS SECTION DOES NOT AFFECT THE ABILITY OF A PERSON TO CONTINUE A
38 CASE AS PROVIDED BY LAW AND COURT RULES.

39 D. FOR THE PURPOSES OF THIS SECTION, "CASE TRANSFER SYSTEM" MEANS A
40 SYSTEM IN WHICH A CASE THAT WAS ORIGINALLY ASSIGNED TO A SUPERIOR COURT JUDGE
41 WHO IS UNAVAILABLE TO TRY THE CASE ON THE DATE SET FOR TRIAL IS REASSIGNED TO
42 ANOTHER JUDGE, COMMISSIONER OR JUDGE PRO TEMPORE, AS AVAILABLE.

43 13-4442. Victim access; defendant's medical records

44 THE VICTIM SHALL HAVE ACCESS TO MEDICAL RECORDS THAT THE DEFENDANT
45 MAKES AVAILABLE TO ANY PERSON FOR THE PURPOSE OF ANY CRIMINAL PROCEEDING IF

1 THE DEFENDANT'S MENTAL HEALTH IS PUT AT ISSUE AS GROUNDS FOR DISMISSAL OF
2 CHARGES, WITH OR WITHOUT PREJUDICE, AS GROUNDS FOR A JURY FINDING OF GUILTY
3 EXCEPT INSANE UNDER SECTION 13-502 OR AS MITIGATION.

4 Sec. 14. Section 39-127, Arizona Revised Statutes, is amended to read:

5 39-127. Free copies of police reports and transcripts for crime
6 victims: definitions

7 A. A victim of a criminal offense that is a part I crime under the
8 statewide uniform crime reporting program or an immediate family member of
9 the victim if the victim is killed or incapacitated has the right to receive
10 one copy of the police report from the investigating law enforcement agency
11 at no charge AND ONE COPY OF THE TRANSCRIPT OF ANY PROCEEDING IN THE CASE
12 ARISING OUT OF THE OFFENSE COMMITTED AGAINST THE VICTIM AT NO CHARGE.

13 B. For the purposes of this section, "criminal offense", "immediate
14 family" and "victim" have the same meanings prescribed in section 13-4401.

15 Sec. 15. Repeal

16 Laws 2005, chapter 260, section 15 is repealed.

17 Sec. 16. Study committee on victims' recovered property

18 A. A study committee on victims' recovered property is established
19 consisting of the following members who are appointed by the president of the
20 senate:

21 1. Two members who represent the majority party.

22 2. One member who represents the minority party.

23 B. The committee shall meet a minimum of three times at a time and
24 place set by the chairperson.

25 C. The committee shall:

26 1. Review the practices regarding a victim's property that is
27 recovered by a law enforcement agency.

28 2. Review towing and storage fees relating to stolen automobiles that
29 are recovered.

30 3. Review the impact of any fees or recovery procedures on crime
31 victims.

32 4. On or before December 15, 2007, make recommendations concerning
33 laws, rules or procedures that are necessary to improve the return of
34 recovered property to a victim.

35 Sec. 17. Delayed repeal

36 Section 16 of this act, relating to the study committee on victims'
37 recovered property, is repealed from and after September 30, 2008.

38 Sec. 18. Purpose

39 A. The people of the state of Arizona overwhelmingly passed the
40 Arizona victims' bill of rights in 1990.

41 B. Before passage of the victims' bill of rights, victims had no
42 assertable right to a speedy and prompt resolution or to a prompt and final
43 conclusion of a case after the conviction and sentence.

44 C. Among the rights guaranteed to crime victims by the Arizona
45 victims' bill of rights are:

1 1. The right to be treated with fairness, respect and dignity, and to
2 be free from intimidation, harassment or abuse, throughout the criminal
3 justice process.

4 2. To receive prompt restitution from the person or persons convicted
5 of the criminal conduct that caused the victim's loss or injury.

6 3. To be heard at any proceeding when any postconviction release from
7 confinement is being considered.

8 4. The right to a speedy trial or disposition and prompt and final
9 conclusion of the case after the conviction and sentence.

10 5. To have all rules governing criminal procedure and the
11 admissibility of evidence in all criminal proceedings protect victims' rights
12 and to have these rules be subject to amendment or repeal by the legislature
13 to ensure the protection of these rights.

14 D. The victims' bill of rights gave the legislature the power to enact
15 substantive and procedural laws to define, implement, preserve and protect
16 the rights guaranteed to crime victims by the victims' bill of rights.

17 E. The legislature finds that the rights guaranteed to crime victims
18 by the victims' bill of rights are being violated by the excessive amount of
19 time it takes for criminal defendants to be brought to trial and for all
20 postconviction matters pending in state court to be completed.

21 F. The purpose of the legislature in passing this bill is to protect
22 and preserve the rights guaranteed to crime victims by the victims' bill of
23 rights by ensuring that victims are paid restitution, are given due notice
24 throughout criminal cases and have their privacy protected, that capital
25 defendants are brought to trial in a reasonable time, and that all
26 postconviction matters pending in state court are initiated and completed
27 within a reasonable amount of time.